

DOWD, J.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

Herman E. Garner, III)
Petitioner,) CASE NO. 4:07CV1964
v.) 4:01CR0321
United States of America,)
Respondent.)
)

On June 29, 2007 Petitioner Herman E. Garner, III filed the above-captioned civil action pursuant to 28 U.S.C. Section 2255 seeking to have his sentence corrected based on several grounds as alleged in the petition. On July 17, 2007, Petitioner filed a Supplement to his petition to vacate his sentence. See Docket No. 291 in Case No. 4:01CR321.

However, in an opinion decided and filed June 20, 2007, the Sixth Circuit Court of Appeals vacated the judgment of the Court and remanded the action to the Court for resentencing. The factual and procedural background for this case is well-stated in the published opinion of the Court of Appeals which may be found at United States v. Garner, No. 05-4215/4337 (6th Cir. June 20, 2007), slip op. at 5.

The statute under which petitioner has filed his cause of action, 28 U.S.C Section 2255, provides that a petition may be based on the claim that "the sentence was imposed in violation of the Constitution or laws of the United States." With respect to the pending action, the Court finds that the claims it makes are premature in that it seeks to correct a future sentence that has not been yet imposed.

(4:07CV1964)
(4:01CR0321)

Accordingly, the petition is dismissed without prejudice to Petitioner's ability to file an initial 28 U.S.C. Section 2255 to challenge the terms of the sentence after the sentence has been imposed.

The Court also certifies, pursuant to 28 U.S.C. 1915(a)(3), that an appeal from this decision could not be taken in good faith.

The Court further finds no basis for a certificate of appealability and will not issue a certificate of appealability.

IT IS SO ORDERED.

August 13, 2007,
Date

s/ David D. Dowd, Jr.
David D. Dowd, Jr.
U.S. District Judge